IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 426 of 2000.

Judgement reserved on: 20.12.2007

Date of decision: 24.12.2007

State of H.P. **…….Appellant**

Vs.

Kuldeep Singh and Ors. **…. Respondents.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : **Mr. M.L. Chauhan, Addl. Advocate General.**

For the Respondents : **Mr. Ashok Sharma, Advocate.**

Kuldip Singh, Judge.

The State has filed this appeal against the judgment dated 15.9.1999 passed by learned Judicial Magistrate Ist Class-I , Dharamshala in Crl. Case No.23-II/ 99 acquitting respondents under Sections 451, 506 read with Section 34 IPC .

2. The prosecution case in brief is that on the complaint of PW-1 Rakesh Kumar FIR Ex.PW-4/A was registered at Police Station, Shahpur. The further case is that on 12.11.1998 respondents came to the shop of PW-1 in drunken state and asked him why his father is constructing a road without their permission. He told them that they could ask this question to his father, on this they abused and threatened him. On 20.11.1998 at about 8.30 pm the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

respondents again came in his shop and abused him, they held him from neck and slapped him. In the meantime PW-2 Mohinder Singh came there and saved him from the respondents, on this respondents left the place and threatened him with dire consequences. The matter was reported to the police and FIR Ex.PW-4/A came to be registered. On completion of investigation, challan was put up against the respondents and charge was framed against respondents under Sections 451, 506 read with Section 34 IPC. The prosecution examined five witnesses. The statements of respondents were recorded under Section 313 Cr.P.C.. They pleaded their innocence but did not lead any evidence in defence. The trial Magistrate acquitted the respondents, hence this appeal.

3. I have heard Mr. M.L. Chauhan, learned Addl. Advocate General for the State and Mr. Ashok Sharma, learned counsel for the respondents and gone through the record. On behalf of the State it has been submitted that trial Magistrate has misconstrued and misinterpreted the material on record. The prosecution has proved the case against the respondents and they deserve to be convicted. Mr. Sharma representing the respondents supported the impugned judgment.

4. The respondents have been charged for the occurrence dated 20.11.1998, but prosecution case is in two parts. It has been alleged that on 12.11.1998 the respondents came to the shop of PW-1 Rakesh Kumar, abused him and they again came on 20.11.1998 and gave him beatings. PW-1 Rakesh Kumar has stated that he is running confectionary shop at Draman. On 12.11.1998 at about 8.30

pm respondents came to his shop under the influence of liquor. They asked him why his father was constructing road without their permission, they abused him. He asked them to talk to his father. On this respondents threatened him and they left the place. PW-1 has not named any person who witnessed the occurrence dated 12.11.1998. He has further stated that on 20.11.1998 at about 8.30 pm the respondents again came to his shop abused him, the respondent NO.3 pulled him out of the shop and caught hold him from neck. The remaining respondents gave him beatings with kicks and fist blows. Mohinder Singh rescued him on both the occasions. Thereafter he went to the Police Station, reported the matter to the police on the same day. Police visited the shop but respondents were not there. He was not medically examined. In cross-examination he has stated that shop of Mohinder Singh is at a distance of 30-35 yards from his shop and opposite to his shop across the road there are 20-25 shops. He has further stated that on 20.11.1998 he did not report to the police but police came there on their own at about 9.15 pm. On the spot Mohinder Singh and 5-7 persons were there. Mohinder Singh accompanied him to the police.

5. PW-2 Mohinder Singh has stated that on 20.11.1998 at about 8.30/9.00 pm., respondents under the influence of liquor were making noise and abusing. They abused him first of all, thereafter they went to the shop of Rakesh Kumar and abused him also. He also went there. Both the parties discussed something hotly and they were in high temper. He separated them and proceeded towards his shop. Later on police came and he went to his shop. In cross-

examination, he has stated that his shop is after 10-12 shops of Raksh Kumar. On the right side of the shop of Rakesh Kumar there is tyre shop of Roshan and on the other side there is shop of Dr. Sanjay. On 20.11.1998 police did not come to the spot in his presence.

6. PW-3 Pawan Kumar has stated that on 12th of the month in the year 1998 at about 8/8.30 pm he had gone to purchase eggs from the shop of the complainant, the respondents were abusing Rakesh, but he does not know the reasons. He left the place thereafter. PW-4 SI Dharam Chand has recorded FIR Ex.PW-4/A. PW-5 HC Des Raj, Investigating Officer conducted the investigation, prepared spot map Ex.PW-5/A. The respondents denied the occurrence in their statements under Section 313 Cr.P.C.

7. The main prosecution witnesses PW-1, PW-2 and PW-3 have given different versions in their statements on material points. PW-1 has stated that he was pulled out of the shop by respondent No.3 Sanjeev Kumar and other respondents gave him kicks and fist blows. He has stated on 20.11.1998 he did not report the matter to the police but police on their own visited the shop at about 9.15 pm. PW-2 Mohinder Singh has not stated that pW-1 Rakesh Kumar was pulled out of the shop and he was given kicks and fist blows. He has stated that respondents were under the influence of liquor but this is not so stated by PW-1. No medical examination of the PW-1 was conducted to show he was given beatings nor medical examinations of the respondents were conducted to prove that they were under the influence of liquor. Mohinder Singh has stated that he left the place

after the occurrence but it is not so stated by PW-1. PW-3 has narrated about the occurrence dated 12th of the month and he has not stated anything regarding the occurrence dated 20.11.1998 for which the respondents were prosecuted. It has come in evidence that on the right side of the shop of complainant there is tyre shop of Roshan and on the other side shop of Dr. Sanjay. No explanation has been given why Rakesh and Sanjay were not associated in the investigation. The statement of PW-1 Rakesh has not been corroborated by any other witness. The trial Magistrate has properly appreciated the evidence and has come to a possible view on the basis of material on record. The prosecution has failed to prove any case against the respondents. No case of interference is made out. The appeal is accordingly dismissed.

(Kuldip Singh)
Judge.

December 24, 2007
(sks)